

# Accident Benefit Reporter

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## AMERICA THE BEAUTIFUL: AUTO INSURANCE FOR ONTARIANS

Instead of staying put all year in the great white north I, like many Ontarians, regularly visit the beautiful American cities of Buffalo and Detroit. Though most Ontarians sail through these border towns and are pleased when they see them in their rear view mirrors, en route to friendlier, sunnier, and greener destinations, New York State and Michigan are the two states Ontarians drive through more often than any other.

When an Ontarian is injured in a car accident in the United States, navigating the auto insurance system and protecting the legal rights of accident victims can be a complicated proposition. Ontarians injured anywhere in North America have access to no fault Statutory Accident Benefits through their own auto insurance. This covers Ontarians for \$1,000,000 of coverage in a catastrophic accident, even if the accident is your own fault. Ontarians also have no fault income replacement benefits of up to \$400 per week.

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The State of Michigan, for obvious reasons, is a very automobile friendly state. Michigan has very strong no fault coverage for accident victims injured in the state. If involved in a motor vehicle accident while in Michigan, Ontarians usually have a right to elect between their own Ontario no fault benefits or those of Michigan. With accident benefits recently slashed by the Ontario government and changes to the insurance regime in Ontario making it harder and harder to be eligible to receive maximum coverage, choosing Michigan no fault benefits is often the best choice. The decision should, of course, be tailored to the needs of the injured party. For example, Michigan

In light of the above, if an Ontarian is injured in Michigan or any other state, they can issue a claim against the at fault driver and the Ontario hurdles described above will not apply regardless of whether the claim is brought in Ontario or in the state of the accident (your lawyer will be the one to decide where your claim should be brought, as there are important jurisdictional issues in play). Unfortunately, it is rarely as simple as just suing the American driver because most drivers in the United States carry very low liability insurance. In Michigan and New York State, the minimum liability insurance drivers can carry is under \$50,000. It is usually the case where



has a very generous income replacement regime. In isolation, electing Michigan no fault benefits would be the logical choice if someone expected to miss a few years of work as a result of a car accident. This important choice should be made only after consulting with an experienced personal injury lawyer from a reputable law firm.

In addition to the no fault benefits coverage, Ontarians who are injured by the fault of another have the right to a lawsuit. The Ontario system for motor vehicle accident lawsuits has several hurdles in place for accident victims, including that the injured party must have a permanent serious impairment of an important mental or physical bodily function, and if they pass that hurdle there is a deductible that eats up over \$37,000 of their general damages if their general damages are less than about \$125,000. General damages are awarded for pain and suffering.

an Ontarian injured in an accident in the United States seeks redress from the low-coverage American policy of the American driver who hit them, and then seeks recovery from their own Ontario insurance policy by way of underinsured coverage in something called the Family Protection Endorsement. This means that your own Ontario insurer will step into the shoes of the at-fault driver and *fill the gap* between your own liability policy and the American driver's policy.

The above is best illustrated by the following example: a husband, wife, and their two children are traveling from Sarnia, Ontario to Orlando, Florida. They are unfortunately sideswiped by a car driven by a Michigan driver in Flint, Michigan. Those on the driver's side of the vehicle, the husband and his child, are both severely injured. The Michigan driver only has \$50,000 of liability insurance which must be split on a pro rata basis between the husband and his child, based on the severity of their injuries and damages.

# HOW MUCH COVERAGE DO I NEED



They then would look to their own policy to make up for the difference. Unfortunately, most Ontarians carry only \$1,000,000 of liability insurance and sometimes less. If that was the case above, it would have to be shared on a pro rata basis between the husband and the child, and there would only be \$950,000 available to share between the two of them (\$1,000,000 policy minus the Michigan Driver's \$50,000). The \$950,000 would fall well short of the family's true entitlement to damages in a serious case.

The above example illustrates the reason why Ontarians need to consider increasing their liability coverage if they can afford to do so. The cost difference in premiums is surprisingly very low to add another million dollars to your own auto policy. Of course this ability to *fill the gap* applies to accidents in Ontario as well, not just in the United States. As an aside, in Ontario, someone with \$1,000,000 cannot access their own policy in a lawsuit if they are injured by another driver who also has a \$1,000,000 liability policy, as you cannot stack the policies when they are the same. Your policy can only *fill the gap*.

However, if a young child was injured by an at fault driver with \$1,000,000, and the child's parent had their own \$3,000,000 policy, the child could access the parent's policy to make up for the difference or *fill the gap* by having access to the additional two million dollars.

Ontarians injured in the United States should be sure to call experienced counsel in Ontario to ensure that their rights are fully protected when navigating the complicated cross-border coverage issues. Making sure you have adequate insurance in place will give you peace of mind as you head to America and drive from sea to shining sea.

*Carr Hatch is a Partner at Thomson, Rogers in Toronto. In addition to numerous accident victims in Ontario, Carr has represented Ontario victims of motor vehicle accidents in Michigan, New York State, Ohio, Pennsylvania, Georgia, North Carolina, Florida, California, and Mexico. ■■■*

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## UPCOMING EVENTS 2017



**September 13 BIAN Brimingham Invitational** – Legends on the Niagara, Niagara Falls. Click [here](#) for more information.

**September 16 BIAPH Walk N' Roll** – Lake Aquitaine Park, Mississauga. Click [here](#) for more information.

**September 28 Back to School Conference: ABI Across the Ages co-hosted by PIA Law and Toronto ABI Network** – The Carlu, Toronto. For more information and to registration click [here](#).

**October 1 BIST 5K Run, Walk and Roll in Support of Acquired Brain Injury** – Wilket Creek Park, North York. For more information click [here](#).

**Nov 1-3 Acquired Brain Injury Provincial Conference hosted by Ontario Brain Injury Association** – Sheraton on the Falls Hotel, Niagara Falls.

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